

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

MICKI HUNTER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	NO. 3:10-1164
	)	Judge Trauger/Bryant
BANK OF NEW YORK MELLON,	)	<b>Jury Demand</b>
et al.,	)	
	)	
Defendants.	)	

TO The Honorable Alta A. Trauger

**REPORT AND RECOMMENDATION**

It appears from the record that the Court has dismissed this action against all defendants except McCalla Raymer, PLLC and Michael J. McCormick, and the record fails to show that these two defendants have ever been served with process.

On April 1, 2011, the Court entered an order to show cause why the complaint against three defendants should not be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, based upon plaintiff's failure to serve these defendants with process within 120 days after the complaint was filed (Docket Entry No. 8). Plaintiff filed a response to this show cause order (Docket Entry No. 10) in which she stated in substance that she was seeking an attorney to represent her in this matter. Thereafter, the record indicates that summons were issued addressed to defendants McCormick, McCalla Raymer, and Mondelli (Docket Entry No. 11). Defendant Mondelli thereafter appeared through counsel, but no appearance has been made by defendants McCormick and McCalla

Raymer. Moreover, the record fails to indicate that these two defendants have ever been served.

In the Court's earlier order to show cause entered April 1, 2011, the Court informed plaintiff that the Court must dismiss the action without prejudice against a defendant if such defendant is not served within 120 days after the complaint is filed or the Court grants an extension of time for service upon good cause. Despite this prior notification, the record fails to show that plaintiff has obtained service of process on defendants McCormick and McCalla Raymer, nor has plaintiff sought an extension of time within which to do so.

For the foregoing reasons, the undersigned Magistrate Judge finds that, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, the complaint should be **DISMISSED** without prejudice against defendants McCormick and McCalla Raymer.

#### **RECOMMENDATION**

For the reasons stated above, the undersigned Magistrate Judge **RECOMMENDS** that the complaint against defendants McCormick and McCalla Raymer be **DISMISSED** without prejudice for failure to obtain service of process upon these defendants.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days from service of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said

objections shall have fourteen (14) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986).

**ENTERED** this 8th day of March 2012.

s/ John S. Bryant  
JOHN S. BRYANT  
United States Magistrate Judge